

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

DEC 03 2012

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| LOREZO JAMES IVEY, |) | CASE NO. 7:12CV00588 |
| |) | |
| Petitioner, |) | |
| |) | MEMORANDUM OPINION |
| v. |) | |
| |) | |
| DIRECTOR, VIRGINIA |) | |
| DEPARTMENT OF CORRECTIONS, |) | By: James C. Turk |
| |) | Senior United States District Judge |
| Respondent. |) | |

Lorenzo James Ivey, a Virginia inmate proceeding pro se, filed this petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging the October 17, 2006 judgment of the Circuit Court of Culpeper County under which he stands convicted of two counts of robbery, use of a firearm in the commission of a felony, and possession of a firearm by a convicted felon, and sentenced to 58 years in prison with 40 years suspended. The court finds that the petition must be summarily dismissed as successive, pursuant to 28 U.S.C. § 2244(b).¹

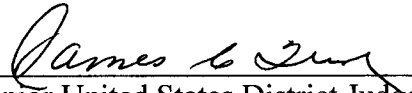
Ivey's petition indicates, and court records available on line verify, that Ivey previously filed a § 2254 petition concerning the same conviction in the United States District Court for the Eastern District of Virginia. See Ivey v. Commonwealth, Civil Action No. 1:10CV917 (AJT/IDD) (E.D. Va. Dec. 6, 2010) (dismissed with prejudice as untimely under 28 U.S.C. § 2244(d)), appeal dismissed, Ivey v. Kelley, 415 F. App'x 481 (4th Cir. Mar. 9, 2011). Thus, Ivey's current petition is a subsequent one, falling under the prohibition in 28 U.S.C. § 2244(b) against a second or successive petition.

¹ Under Rule 4(b) of the Rules Governing § 2254 Cases, the court may summarily dismiss a § 2254 petition "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court."

Pursuant to § 2244(b), a federal district court may consider a second or successive § 2254 petition only if petitioner secures specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the petition meet certain criteria. § 2244(b)(3). Because Ivey does not demonstrate that he has obtained such certification by the Court of Appeals, the court will dismiss the petition without prejudice as successive. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner.

ENTER: This 3rd day of December, 2012.



Senior United States District Judge